(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 753/2005

Tek Singh Verema.

Versus

State of Chhattisgarh

Post for judgment : 23.01.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

A.F.R.

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.753/2005

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Tek Singh Verema.

Versus

State of Chhattisgarh

Shri P. Diwakar, learned Sr. Counsel with Shri P.R.Patankar for the appellant.
Shri Ravindra Agrawal, P.L. for the State.

JUDGMENT

(Delivered on 23rd of January 2006)

This appeal is directed against the judgment dated 31.08.2005 delivered by Shri L.R.Thakur, 8th Additional Sessions Judge (F.T.C.), Durg in Sessions Case No. 162/2004 whereby the appellant was convicted under Section 306 of the I.P.C. and was sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.2,000/-, in default of the same, to undergo additional R.I. for six months.

2. It is not disputed that the deceased Pritam Bai was married to the appellant in the year 2003 and committed suicide by setting herself on fire on 2.5.2004.

3. The prosecution story in short is that ever since his marriage with the deceased the appellant used to doubt the character of the deceased and always used to quarrel with her and levelled allegations of sexual infidelity against her. A day prior to the occurrence, the appellant had again quarrelled with the deceased and said that she had illicit relationship with other persons. Fed up with this, at 4.00 A.M.

on 2.5.2004 the deceased on went to the *Badi* of her house and after pouring kerosene over her body, set herself on fire. The deceased was removed to the District Hospital, Durg. The deceased narrated to Dr. S.R.Churendra P.W.2 that she had set herself on fire due to the allegations levelled against her by the husband.

3. Dying declaration of Pritam Bai was recorded by Naib Tahsildar Shri Pulak Bhattacharya P.W.7 vide Ex.P.6 in which she stated that her husband repeatedly doubted her character and at night levelled allegations that she had illicit relationship with other people and therefore, he would divorce her. As a result of this, she got fed up and went to the *Badi* and after pouring kerosene, set herself on fire.

4. Pritam Bai succumbed to the burn injuries in the night of 2.5.2004. Post-mortem was conducted by Dr. A.P.Sawant P.W.9 who opined that the cause of death was shock due to the extensive ante-mortem burn injuries sustained by her. After completion of investigation, the accused appellant was prosecuted under Section 306 I.P.C.

5. The accused-appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 26 witnesses. The trial Judge, relying upon the dying declaration of Pritam Bai recorded by Pulak Bhattacharya (P.W.7) and also the testimony of the parents of the deceased i.e. Chaitram P.W.15 and Sawaana Bai P.W.16, convicted & sentenced the accused-appellant as aforesaid in para 1.

6. Learned counsel for the appellant has placed reliance on *Nanka v. State of M.P.* reported in **1999 (1) M.P.W.N. [52]** in support of his contentions that even if the evidence adduced by the prosecution including the dying declaration Ex.P.6 against the appellant is accepted on its face value, it would not amount to abetment to commit suicide.

It was contended that mere leveling of charges of illicit relationship would not amount to abetment as defined under Section 107 of I.P.C. On the other hand, learned counsel for the State has supported the impugned judgment.

7. Section 107 of I.P.C. reads as under:

> "107. **Abetment of a thing** - A person abets in doing of a thing, who—
>
> *Firstly*---Instigates any person to do that thing; or
>
> *Secondly*---Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> *Thirdly*--- Intentionally aids, by any act or illegal omission, in doing of that thing.
>
> *Explanation 1.*--- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

It is thus clear that for constituting the offence of abetment, it must be shown by the prosecution that the appellant instigated or intentionally aided a doing of a particular thing. In other words, it must be proved by the prosecution that the accused intentionally instigated the deceased to commit suicide. In other words, the act of suicide committed by the deceased must be the proximate cause of the instigation offered by the accused and it must be shown that the instigation, if any, was so direct, co-related, immediate and proximate with the act of suicide that it can be safely inferred that the deceased committed suicide only on account of such instigation. This is in conformity with the dictum laid down by this Court in *Rakesh Vaishnav Vs. State of M.P.* 2004 (1) CGLJ 324.

8. The only point which requires consideration in this case, therefore, is as to whether the accused-appellant had instigated the

commission of suicide by the deceased-wife. The dying declaration recorded by Pulak Bhattacharya P.W.7 clearly shows that the accused-appellant had levelled allegations that the deceased had illicit relationship with his elder brother and nephew, and therefore, he would divorce her. Letters written by the deceased have been produced as Ex.P.14 and Ex.P.15 which go to show that such allegations were being levelled against the deceased soon after marriage and she was not inclined to live with the accused-appellant. I have gone through the testimony of Chaitram P.W.15 and Sawaana Bai P.W.16, who are the parents of the deceased. There is nothing in the testimony which would lead to an inference that the accused-appellant had ever instigated the commission of suicide by the deceased. So far as the dying declaration of the deceased Ex.P.6 is concerned, it only transpires that the accused-appellant wanted to divorce Pritam Bai. However, no inference can be drawn from the above-mentioned facts that the accused ever instigated or intended that Pritam Bai should commit suicide.

9. It is no doubt tragic that due to the allegation levelled by the accused-appellant the deceased committed suicide yet in the absence of any legal evidence to show that the appellant intended or instigated the commission of suicide by the deceased, the guilt under Section 306 I.P.C. could not be held to be established against the accused-appellant. Merely on the basis of allegation levelled by the appellant relating to infidelity of the deceased, the learned trial Judge drew an inference that the accused-appellant instigated the commission of suicide by Pritam Bai which cannot be said to be in conformity with law.

10. This appeal, therefore, deserves to be and is allowed. Conviction of the appellant under Section 306 I.P.C. and the sentence imposed thereunder are set aside. The appellant is acquitted of the charge

under Section 306 I.P.C. and shall be set at liberty forthwith, if not required in any other offence. Fine, if paid, shall be refunded to the appellant.

Sd-/
Dilip Raosaheb Deshmukh
Judge